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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,347	12/19/2001	Gabriel Teper	01/23036	2480

7590

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EXAMINER

PONNALURI, PADMASHRI

ART UNIT

PAPER NUMBER

1639

DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/018,347

Applicant(s)

TEPER, GABRIEL

Examiner

Padmashri Ponnaluri

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1639

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-50 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

***Election/Restrictions***

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-14 and 47-49, drawn to a bacteriophage library comprising plurality of bacteriophages being characterized into a a) first category having bacteriophages infective to a first type of bacteria; b) a second category of bacteriophage infective to a second type of bacteria; c) a third category of bacteriophages infective to a third type of bacteria.

Group II, claim(s) 15-28, drawn to a method of typing bacteria using a bacteriophage library.

Group III, claim(s) 29-45, drawn to a system for typing bacteria in a sample.

Group IV, claim(s) 46, drawn to a method of uncovering mutant bacteriophages useful in typing bacteria.

Group V, claim(s) 50, drawn to a method of typing bacteria.

2. The inventions listed as Groups I do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The special technical feature of group I invention is bacteriophage library; the special technical feature of group II invention is a method of typing bacteria; the special technical feature of group III inventions is drawn to a system useful in typing bacteria (an apparatus); the special technical feature of group IV is identifying mutant bacteriophages; and the special technical feature of group V inventions is a method of typing bacteria using a bacteriophage library. The special technical feature of group I is well known in the art, i.e., see Loessner et al (Applied and Environmental Microbiology, June 1990, pages 1912-1918), teaches typing bacteria using bacteriophage library. Thus the instant inventions lack unity.

3. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

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The species are as follows:

Applicants are requested to elect a single species for each of the following:

- a) one single species of first type of bacteria (i.e., one single species of bacteria);
- b) one single species of second type of bacteria (i.e., one single species of bacteria);
- c) one single species of third type of bacteria (i.e., one single species of bacteria);
- d) how the three different types of bacteria related (i.e., belong to same species but differ by the strain or belong to different species... etc);
- e) a number representing 'N'.

The different species requirement results in a different type of bacteriophage library, and the different bacteriophages or bacteria used in the library are distinct from each other, the species election is proper.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

All the claims are deemed to correspond to the species listed above .

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4: The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: the different species of a)-d) result in a different type of bacteriophage library which are distinct from each other by having a different structure or function thus lack the special technical feature.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Padmashri Ponnaluri whose telephone number is 703-305-3884. The examiner is on Flex Schedule and can normally be reached on Monday to Friday between 7 AM and 3.30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Wang can be reached on 703-306-3217. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3014 for regular communications and 703-872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0916.

Padmashri Ponnaluri  
Primary Examiner  
Art Unit 1639

pp  
August 24, 2003

  
**ANDREW WANG**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 1600**